

AUG 14 2006

ROBERT H. SHEMUELL, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CHRISTOPHER DUFRENE

CIVIL ACTION NO. 05-2066-P

VERSUS

JUDGE HICKS

CAPTAIN TUNER, ET AL.

MAGISTRATE JUDGE HORNSBY

REPORT AND RECOMMENDATION

In accordance with the standing order of this Court, this matter was referred to the undersigned Magistrate Judge for review, report and recommendation.

STATEMENT OF CLAIM

Before the Court is a civil rights complaint filed in forma pauperis by pro se plaintiff Christopher Dufrene ("Plaintiff"), pursuant to 42 U.S.C. § 1983. This complaint was received and filed in this Court on December 1, 2005. Plaintiff is incarcerated at the David Wade Correctional Center in Homer, Louisiana, and he alleges his civil rights were violated by prison officials. He names Captain Tuner, Lieutenant Hickman and Sergeant Wallace as defendants.

Plaintiff claims that on July 31, 2005, Sergeant Wallace did not give him his morning meal. He claims he refused to give Sergeant Wallace his cup and milk because he did not give him his meal. He claims Lieutenant Hickman was then called to his cell and placed him on food loaf for no reason.

Plaintiff claims that on August 4, 2005, Sergeant Wallace accused him of cutting his finger and ordered Captain Tuner to spray him with mace. He alleges Captain Tuner sprayed

him with two cans of mace. He claims that after he was maced, he was not allowed to shower. Plaintiff claims the mace burned the back of his neck. He claims he was then placed on posted policy #53 (food loaf) for seven days.

As relief, Plaintiff seeks monetary compensation and to have Captain Tuner and Lieutenant Hickman demoted.

For the following reasons, Plaintiff's complaint should be dismissed with prejudice as frivolous.

LAW AND ANALYSIS

Excessive Force

The Eighth Amendment prohibits prison officials from inflicting cruel and unusual punishment upon prisoners. Cruel and unusual punishment in the context of excessive force is "unnecessary and wanton infliction of pain." See Whitley v. Albers, 475 U.S. 312, 319, 106 S. Ct. 1078, 1084 (1986). In prison security measures, the question of what constitutes "unnecessary and wanton" infliction of pain turns on whether the force was applied in "a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Hudson v. McMillian, 503 U.S. 1, 6, 112 S. Ct. 995, 998 (1992) (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973)). However, when the use of force is "de minimis," the Eighth Amendment's prohibition against cruel and unusual punishment is not activated. See id. at 9-10, 112 S. Ct. at 1000. In addition, a prisoner must also allege an injury that is more than de minimis, although it need not be significant. See

Gomez v. Chandler, 163 F.3d 921, 924 (5th Cir. 1999). See also Siglar v. Hightower, 112 F.3d 191 (5th Cir. 1997).

In the present case, Plaintiff alleges only that his neck burned after he was sprayed with mace. He does not claim that he sought medical treatment for his alleged injury. Thus, the Court concludes that Plaintiff's alleged injury was a de minimis one and he has therefore, failed to allege any violations of his civil rights that rise to a constitutional magnitude. Accordingly, his excessive force claim should be dismissed with prejudice as frivolous.

Conditions of Confinement

Plaintiff filed this claim pursuant to 42 U.S.C. § 1983 of the Civil Rights Act which provides redress for persons "deprived of any rights, privileges or immunities" by a person acting under color of state law. The particular right protected under 42 U.S.C. § 1983 in matters which concern alleged unconstitutional conditions of confinement is the Eighth Amendment prohibition against cruel and unusual punishment. Under the Eighth Amendment, prison officials are required to provide humane conditions of confinement, ensuring that inmates receive adequate food, clothing, shelter and medical care, and must take reasonable measures to guarantee safety of inmates. See Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970 (1994).

An Eighth Amendment claim has two required components. See Wilson v. Seiter, 501 U.S. 294, 298, 111 S.Ct. 2321, 2324 (1991). First, the deprivation alleged must be sufficiently serious. See id., 111 S. Ct. at 2324. "[O]nly those deprivations denying 'the

minimal civilized measure of life's necessities' are sufficiently grave" to constitute cruel and unusual punishment. Id., 111 S. Ct. at 2324 (quoting Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392, 2399 (1981)). Furthermore, this Court should consider the duration and the totality of the specific circumstances that constituted the conditions of Plaintiff's confinement. Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999). Second, the prison official must have acted with a sufficiently culpable state of mind. See id. at 305, 111 S. Ct. at 2328; Farmer, 511 U.S. at 838, 114 S. Ct. at 1979. In prison condition of confinement cases, that state of mind is deliberate indifference, which the Supreme Court recently defined as knowing of and disregarding an excessive risk to inmate health or safety. See id., 114 S. Ct. at 1979.

Finally, a prisoner must also allege an injury that is more than de minimis, although it need not be significant. See Gomez v. Chandler, 163 F.3d 921, 924 (5th Cir. 1999). See also Siglar v. Hightower, 112 F.3d 191 (5th Cir. 1997).

In this case, after a thorough review of Plaintiff's complaint, read in a light most favorable to him, the Court finds that the facts alleged do not support a finding that Defendants' conduct was sufficiently harmful enough to deprive him of life's basic necessities. See Wilson, 501 U.S. at 298, 111 S. Ct. at 2324. Plaintiff complains that on July 31, 2005, he was deprived of his morning meal. Plaintiff also complains that for seven days he was forced to eat food loaf for every meal. After considering the duration and the totality of the specific circumstances that constituted the conditions of Plaintiff's confinement, this

Court finds that the facts alleged do not support a finding that Defendants' conduct was sufficiently harmful enough to deprive him of life's basic necessities. See Wilson, 501 U.S. at 298, 111 S. Ct. at 2324. Thus, Plaintiff's claim has failed to satisfy the first requirement of an Eighth Amendment claim.

Accordingly, the conditions alleged do not rise to the level of cruel and unusual punishment. Thus, Plaintiff's conditions of confinement claims lack an arguable basis in law and should be dismissed with prejudice as frivolous.

CONCLUSION

Because Plaintiff filed this proceeding in forma pauperis ("IFP"), if this Court finds Plaintiff's complaint to be frivolous, it may dismiss the complaint as such at any time, before or after service of process, and before or after answers have been filed. See 28 U.S.C. § 1915(e); Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986); Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). District courts are vested with extremely broad discretion in making a determination of whether an IFP proceeding is frivolous and may dismiss a claim as frivolous if the IFP complaint lacks an arguable basis either in law or in fact. See Hicks v. Garner, 69 F.3d 22 (5th Cir. 1995); Booker v. Koonce, 2 F.3d 114 (5th Cir. 1993); Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827 (1989). For the reasons stated, this Court finds that the IFP complaint of Plaintiff lacks an arguable basis either in law or in fact.

Accordingly;

IT IS RECOMMENDED that Plaintiff's civil rights complaint be **DISMISSED**

WITH PREJUDICE as frivolous under 28 U.S.C. § 1915(e).

OBJECTIONS

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have ten (10) business days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Civ. P. 6(b). A party may respond to another party's objection within ten (10) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendations set forth above, within ten (10) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking, on appeal, the proposed factual findings and legal conclusions that were accepted by the district court and that were not objected to by the aforementioned party. See Douglas v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED, in chambers, in Shreveport, Louisiana, on this 14th
day of August 2006.



MARK L. HORNSBY
UNITED STATES MAGISTRATE JUDGE